

From: Joe Stevens
To: Microsoft ATR
Date: 1/23/02 8:52am
Subject: Microsoft Settlement

Just want to add my two cents to this Microsoft settlement. Having worked with graphics on computers since long before personal computers and Windows was around, I have seen a lot of good (and bad) programs come and go. And eventually they all went away as Microsoft used it's ever growing influence to force change out of the marketplace. I think they have used unethical and illegal practices to put competition out of business, leaving us with mediocre, insecure, OSs and programs. I think a remedy should be found that prevents them from continuing their practice, and in some way makes whole those who lost their businesses, companies, and livelihood from MS business practices.

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Guidelines for a fair remedy:

Any remedy in a case that has been so clear-cut in its findings must be more assertive in its defence of consumer interests. Regardless of specifics, such a remedy must address the following:

1. Recurrence: Microsoft must not be able to continue to abuse its monopoly the way it has in the past.
2. Reimbursement: Microsoft has no right to retain the excess profits it has earned as a result of its illegal actions. This money should be repaid to the consumer.
3. Reparations: As Microsoft is responsible for the current uncompetitive market in operating systems and related applications, it must underwrite efforts to restore competition and consumer choice. The rest of the market should not have to pay to recover from Microsoft's abuses.
4. Reference: Microsoft must pay punitive damages over and above its reimbursement and reparations obligations, to serve as a warning to deter future monopolists. The remedy must in no case send out a signal that a large enough violator can get off lightly. Future tax dollars can be saved by discouraging abuses instead of having to prosecute them.

The DoJ is supposed to be acting on behalf of the consumer, and they must pursue a remedy that addresses all the above issues.

For example, a remedy that required Microsoft, among other things, to only sell through channels that offer at least one other operating system, could address the reparations issue and break the structural forces perpetuating their monopoly (If an OEM requires training to support another operating system, Microsoft may be forced to subsidise such training).

The proposed settlement goes partway towards addressing the issue of recurrence, but does so only half-heartedly because it creates significant exceptions and loopholes for Microsoft to take advantage of. It completely ignores the other three issues. An impression is created that the DoJ is more sensitive to Microsoft's interests than to the interests of consumers who have been systematically robbed of both their choices and their money.

Therefore this proposed settlement must be rejected as not being in the public interest.

Ganesh Prasad

Well, Microsoft now appears to be exacting its revenge, leaning this time on the same letter of the old law to not only get a better deal, but literally to disenfranchise many of the people and organizations who feel they have been damaged by Microsoft's actions. If this deal goes through as it is written, Microsoft will emerge from the case not just unscathed, but stronger than before.

Here is what I mean. The remedies in the Proposed Final Judgement specifically protect companies in commerce -- organizations in business for profit. On the surface, that makes sense because Microsoft was found guilty of monopolistic activities against "competing" commercial software vendors like Netscape, and other commercial vendors -- computer vendors like Compaq, for example. The Department of Justice is used to working in this kind of economic world, and has done a fair job of crafting a remedy that will rein in Microsoft without causing undue harm to the rest of the commercial portion of the industry. But Microsoft's greatest single threat on the operating system front comes from Linux -- a non-commercial product -- and it faces a growing threat on the applications front from Open Source and freeware applications.

The biggest competitor to Microsoft Internet Information Server is Apache, which comes from the Apache Foundation, a not-for-profit. Apache practically rules the Net, along with Sendmail, and Perl, both of which also come from non-profits. Yet not-for-profit organizations have no

rights at all under the proposed settlement. It is as though they don't even exist.

Section III(J)(2) contains some very strong language against not-for-profits. Specifically, the language says that it need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business: "... (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..."

So much for SAMBA and other Open Source projects that use Microsoft calls. The settlement gives Microsoft the right to effectively kill these products.

Section III(D) takes this disturbing trend even further. It deals with disclosure of information regarding the APIs for incorporating non-Microsoft "middleware." In this section, Microsoft discloses to Independent Software Vendors (ISVs), Independent Hardware Vendors (IHVs), Internet Access Providers (IAPs), Internet Content Providers (ICPs), and Original Equipment Manufacturers (OEMs) the information needed to inter-operate with Windows at this level. Yet, when we look in the footnotes at the legal definitions for these outfits, we find the definitions specify commercial concerns only.

But wait, there's more! Under this deal, the government is shut out, too. NASA, the national laboratories, the military, the National Institute of Standards and Technology -- even the Department of Justice itself -- have no rights. It is a good thing Afghanistan is such a low-tech adversary and that B-52s don't run Windows.

I know, I know. The government buys commercial software and uses contractors who make profits. Open Source software is sold for profit by outfits like Red Hat. It is easy to argue that I am being a bit shrill here. But I know the way Microsoft thinks. They probably saw this one coming months ago and have been falling all over themselves hoping to get it through. If this language gets through, MICROSOFT WILL FIND A WAY TO TAKE ADVANTAGE OF IT.

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